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ATTORNEYS FOR PLAINTIFFS
HORIZON TOWER LIMITED, LLC
and HORIZON TOWER, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

HORIZON TOWER LIMITED, LLC and HORIZON
TOWER, LLC,

Plaintiffs,

v.

PARK COUNTY, WYOMING; BOARD OF
COUNTY COMMISSIONERS OF PARK COUNTY,
WYOMING; DOSSIE OVERFIELD, LLOYD
THIEL, LEE LIVINGSTON, SCOTT MANGOLD,
and SCOTT STEWARD, in their official capacity as
Members of the Board of County Commissioners for
Park County, Wyoming;

Defendants

Civil Action No.: Case No. 23-CV-
0037-ABJ

**PLAINTIFFS' MOTION TO EXCLUDE THE OPINION AND TESTIMONY OF BRIAN
CLARKSON**

Pursuant to 47 U.S.C. § 332(c)(7)(B)(iii) and Fed. R. Evid. 702, Plaintiff Horizon Tower LLC. (“Horizon”) hereby moves this Court for an order excluding the report and testimony of Brian Clarkson, offered by Defendants Park County, Wyoming; Board of County Commissioners of Park County, Wyoming; Dossie Overfield; Lloyd Thiel; Lee Livingston; Scott Mangold; and Scott Steward (in their official capacity as Members of the Board of Commissioners of Park County, Wyoming) (collectively, the “County” or “Defendants”).

1. This case involves Plaintiff Horizon’s application and proposal to install a wireless facility to remedy a gap in wireless service in the Wapiti Valley area of Park County, Wyoming, and the County’s denial of Horizon’s application, in violation of Section 332(c)(7)(B) of the Federal Communications Act, 47 U.S.C. § 332.
2. Defendants purport to offer the opinion and testimony of Mr. Clarkson, apparently, although it is unclear, in support of their position that potential alternative locations for the proposed wireless facility exist.
3. Under the Communications Act, state and local governments may not prohibit or have the effect of prohibiting the provision of personal wireless services. Under new FCC guidance, which is controlling has been adopted by other federal courts, an analysis of alternative locations is not relevant for the purposes of determining whether an effective prohibition has occurred, thus making Mr. Clarkson’s testimony irrelevant.
4. Even under the previous standard (prior to the FCC’s guidance), Mr. Clarkson’s opinion and testimony are irrelevant because they concern only “viewshed” (or line of sight) – a topic wholly irrelevant to this case.
5. Finally, Mr. Clarkson admits that he is unqualified to opine or testify concerning any topic other than viewshed, including the siting of a wireless tower, and that any such testimony

would be based on his personal, layman opinion. And the Defendants ultimately do not contend that any of Mr. Clarkson's locations are less intrusive than the proposed Horizon facility.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order precluding the County from introducing or relying on the testimony of Mr. Clarkson.

DATED: November 15, 2023.

Respectfully submitted,

/s/ Isaac N. Sutphin

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